

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Reorganized Debtors.¹

PROMESA

Title III
No. 17 BK 3283-LTS

(Jointly Administered)

**INFORMATIVE MOTION OF FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD REGARDING PLAN IMPLEMENTATION AND THE
EXTENSION OF THE FEDERAL SOCIAL SECURITY ENROLLMENT DEADLINE**

To the Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Public Buildings Authority (“PBA”), and the Employees Retirement System of the

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth and PBA, the “Reorganized Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this Informative Motion to inform the Court and parties in interest regarding implementation of social security enrollment for active teachers and judges pursuant to the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.*, dated January 14, 2021 [ECF No. 19784] (the “Plan”), and states as follows:

BACKGROUND

1. On January 18, 2022, the Court entered the *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* [ECF No. 19813] (the “Confirmation Order”).³ The Plan went effective on March 15, 2022 (the “Effective Date”). [ECF No. 20165].

2. A key component of the Plan is the treatment of current and former employee-related claims. Under the Plan, retired former employees’ pension claims continue to be paid in full. Active employees will receive full payment of all accrued pension benefits upon and after retirement. The pension plans of the TRS and JRS were modified to freeze accrual of benefits and cost of living adjustments, with participants to be enrolled in the defined contribution plan under Act 106-2017. *See* Plan §§ 55.8(a), 55.9(a). Additionally, the Plan provides teachers and judges under the age of 45 at the Effective Date will be mandatorily enrolled in Social Security, and

² PROMESA has been codified at 48 U.S.C. §§ 2101–2241.

³ Capitalized terms used herein that are not otherwise defined shall have the meanings given to them in the Confirmation Order or the Plan, as applicable.

teachers and judges 45 and older will have the option to enroll in social security. *See* Plan Exs. F-1 and F-4.

3. To implement the treatment provided to active judges and teachers under the Plan, the Confirmation Order provides:

[N]otwithstanding any provision of Act 106 (including, without limitation, section 3.4 thereof), every (i) Active JRS Participant, (ii) teacher who is an Active TRS Participant, and (iii) teacher and judge hired from and after the Effective Date shall mandatorily make contributions to his or her Defined Contribution Account at a minimum rate of two and three-tenths percent (2.3%) of his or her monthly compensation, up to the limit established in section 1081.01(d)(7) of Act 1-2011; provided, however, that each teacher and judge who is forty-five (45) years of age or older as of the Effective Date shall contribute to his or her Defined Contribution Account at a minimum rate of eight and one-half percent (8.5%) of his or her monthly compensation, up to the limit established in section 1081.01(d)(7) of Act 1-2011, as amended,, known as the “Internal Revenue Code for a New Puerto Rico,” or any successor law thereof, and, therefore, fail to be eligible to contribute to the Federal Social Security System, unless any such teacher or judge shall have irrevocably elected within sixty (60) days of the Effective Date to reduce their contributions to a minimum of two and three-tenths percent (2.3%) and be enrolled in the Federal Social Security system. For teachers who are Active TRS Participants, Active JRS Participants, and teachers and judges first hired after the Effective Date who contribute of two and three-tenths percent (2.3%) of their monthly compensation as set forth above, including those aged 45 and older who have elected to do so, the Employer, in coordination with the Retirement Board and/or Secretary of Treasury, shall withhold the minimum amount of six and two-tenths percent (6.2%) of their applicable monthly compensation and remit such amount to the appropriate authority as required by the applicable provisions of the Federal Social Security Act and other applicable Federal Law to enable the inclusion of the Participant in the Federal Social Security system.

Confirmation Order, ¶ 55(b) (emphasis added).

4. In accordance with the above, teachers who are participants in TRS and Active JRS Participants who are 45 years old or older were eligible to opt into participation in the Federal Social Security system up until May 16, 2022. *Id.*

5. After the passage of this deadline, AAFAF raised concerns that the communication to affected teachers in Puerto Rico of the deadline for teachers who are participants in TRS to opt

to participate in Federal Social Security became confused as a result of the ongoing appeal of the Confirmation Order by certain teachers' associations.⁴

6. To ease the burden on active teachers who may have inadvertently missed the deadline to elect participation in the Federal Social Security system, and following deliberations and consultations with its counsel and advisors, the Oversight Board has determined to extend the social security enrollment deadline for both teachers and judges who were 45 years old or older as of the Effective Date under the Confirmation Order from May 16, 2022 to December 15, 2022 (the "Extended Enrollment Deadline").

7. The Oversight Board will continue to work with AAFAF to ensure that the Extended Enrollment Deadline is communicated to affected teachers and judges.

⁴ On August 9, 2022, a petition for a writ of certiorari was filed with the Supreme Court by the Federación de Maestros de Puerto Rico, Inc., Grupo Magisterial Educadores(as) por la Democracia Unidad, Cambio, Militancia y Organizacion Sindical, Inc., and the Unión Nacional de Educadores y Trabajadores de la Educación, Inc., appealing the First Circuit's affirmation of the Confirmation Order and the treatment of pension claims therein.

Dated: September 1, 2022
San Juan, Puerto Rico

Respectfully submitted,

/s/ Paul V. Possinger
Martin J. Bienenstock
Brian S. Rosen
Paul V. Possinger
(Admission *pro hac vice*)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and
Management Board as representative for the
Reorganized Debtors*

/s/ Hermann D. Bauer
Hermann D. Bauer
USDC No. 215205
O'NEILL & BORGES LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

*Co-Attorneys for the Financial Oversight and
Management Board as representative for the
Reorganized Debtors*